



**DIVISION OF WATER POLLUTION CONTROL
401 CHURCH STREET
L & C ANNEX 6TH FLOOR
NASHVILLE TN 37243-1534**

January 11, 2008

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7005 0390 0006 6034 9031**

D.R. Phillips
9047 Executive Park Drive, Suite 201
Knoxville, TN 37923

Subject: Director's Order No. WPC07-0264
Knox County, Tennessee

Dear Phillips:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, please call Mr. Eric Roberts at (615) 532-0685 or by E-mail at Eric.Roberts@state.tn.us.

Sincerely,

Vojin Janjic
Manager, Enforcement and Compliance Section

CER

cc: DWPC - Knoxville EFO
Nashville Central Office - Enforcement and Compliance Files



**DIVISION OF WATER POLLUTION CONTROL
401 CHURCH STREET
L & C ANNEX 6TH FLOOR
NASHVILLE TN 37243-1534**

January 11, 2008

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT # 7005 0390 0006 6034 9024**

Mr. Cary A Ratliff
400 Erin Drive
Knoxville, TN 37919

Subject: Director's Order No. WPC07-0264
Knox County, Tennessee

Dear Mr. Ratliff:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, please call Mr. Eric Roberts at (615) 532-0685 or by E-mail at *Eric.Roberts@state.tn.us*.

Sincerely,

Vojin Janjic
Manager, Enforcement and Compliance Section

CER

cc: DWPC - Knoxville EFO
Nashville Central Office - Enforcement and Compliance Files

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
SEQUOYAH LIMITED, LLC AND)	
D.R. PHILLIPS, LLC)	
)	
)	
RESPONDENTS)	CASE NO. WPC07-0264

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

II.

Sequoyah Limited, LLC (hereinafter "Respondent Sequoyah") is the owner of a commercial development located on Schaeffer Road in Knox County, Tennessee (hereinafter the "site"). Service of process may be made on Respondent Sequoyah

through Cary A. Ratliff, Registered Agent, at 400 Erin Drive, Knoxville, Tennessee, 37919.

III.

D.R. Phillips, LLC (hereinafter “Respondent Phillips”) is a limited liability company licensed to conduct business in Tennessee. Respondent Phillips is conducting construction activities at the site. Service of process may be made on Respondent Phillips through D.R. Phillips, Registered Agent, at 9047 Executive Park Drive Suite 20, Knoxville, Tennessee, 37923.

JURISDICTION

IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A.

§69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

V.

The Respondents are “persons” as defined by T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondents have violated the Act.

VI.

Plumb Creek and its unnamed tributaries are referred to herein, as “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, “Use Classifications for Surface Waters,” Plumb Creek and its unnamed tributaries have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

VII.

Tennessee Code Annotated §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), site-specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

FACTS

VIII.

On July 6, 2005, Respondent Sequoyah submitted a NOI, SWPPP, and application fee to the Knoxville Environmental Field office (K-EFO), requesting coverage under the TNCGP for construction activities at the site. The division issued coverage on August 15, 2005.

IX.

On December 1, 2005, division personnel conducted a compliance inspection at the site and observed that the physical alteration of a stream had occurred without a valid ARAP. In addition, it was observed that the Respondents failed to properly install and maintain sediment controls, resulting in a condition of pollution.

X.

On December 13, 2005, the division issued a Notice of Violation (NOV) to the Respondents for the violations observed during the December 1, 2005, site visit. The

NOV required the Respondents to immediately stabilize disturbed areas adjacent to the altered stream and to maintain sediment controls throughout the site. The NOV also required the Respondents to submit a written response, including photos, within 15 days receipt of the NOV.

XI.

On January 3, 2006, Respondent Sequoyah submitted an ARAP application to the K-EFO requesting written authorization under the General Permit for Construction and Removal of Minor Road Crossings (GP-MR). In addition, Respondent Sequoyah submitted a NOI, for phase I and II of the development, to obtain coverage under the TNCGP. Furthermore, Respondent Sequoyah also submitted a letter and photographs in response to the December 13, 2005, NOV. The division issued coverage under the ARAP on February 1, 2006, and coverage under the TNCGP on January 26, 2006.

XII.

On February 1, 2006, Respondent Sequoyah submitted an additional NOI for phases I-III of the development. The division issued coverage under the TNCGP on February 13, 2006.

XIII.

On February 14, 2006, division personnel conducted a follow-up inspection at the site and observed that Erosion Prevention and Sediment Control (EPSC) measures along

the west and southwest boundary of the site remained inadequate with silt fences overwhelmed by sediment.

XIV.

On February 15, 2006, the division sent the Respondents an email advising them to install more substantial EPSC measures.

XV.

On August 1, 2007, division personnel conducted a follow-up inspection at the site and observed that EPSC measures were inadequate and improperly maintained. Division personnel also observed that the lack of appropriate controls had allowed sediment to migrate off site and enter the unnamed tributary of Plumb creek, causing a condition of pollution. In addition, the Respondents failed to have a copy of the SWPPP on site. Furthermore, division personnel observed that unstable portions of the site had not been temporarily stabilized after 15 days of no construction activity, as required by the permit.

XVI.

On August 16, 2007, the division issued a NOV to the Respondents for violations observed during the August 1, 2007, site visit. The NOV required the Respondents to submit a corrective action plan for the site within 30 days. The Respondents were advised that if the division noted deficiencies in the future they should be corrected within 14 days. The NOV required the Respondents to implement the plan within 30 days of division approval and to send documentation of the completed activities within 60 days.

XVII.

On August 29, 2007, the division held a Compliance Review Meeting (CRM) with the Respondents. Respondent Sequoyah submitted photographs and a letter during the meeting in response to the August 16, 2007, NOV. The division deemed the material to be incomplete. It did not contain specific dimensions and measurements of sediment deposits to be removed from the stream channel. Site conditions and the requirements of the August 16, 2007, NOV were discussed.

XVIII.

On November 15, 2007, division personnel conducted a follow-up inspection at the site and observed that EPSC measures were improperly maintained. In addition, division personnel observed that the site had not been stabilized after 15 days of no construction activity. Division personnel also observed a lack of appropriate EPSC measures and noted that sediment remained in the unnamed tributary of Plumb creek, continuing to cause a condition of pollution.

XIX.

On November 15, 2007, Respondent Sequoyah submitted plans for repair of site controls and in-stream sediment deposits. The submittal was deemed inadequate in that it did not include sufficient information about sediment removal.

XX.

On November 19, 2007, the division sent the Respondents an email concerning the violations observed during the November 15, 2007, site inspection. The email required the Respondents to install EPSC measures at the site as required by the TNCGP, and submit additional information to supplement a Corrective Action Plan (CAP) for the impacted portions of the unnamed tributary of Plumb Creek. In addition, the email required the Respondents to remove sediment from the property downstream of the site.

XXI.

During the course of investigating this matter, the division incurred damages in the amount of SIX HUNDRED SEVENTEEN DOLLARS AND TWELVE CENTS (\$617.12).

VIOLATIONS

XXII.

By physically altering waters of the state without authorization under an ARAP, failing to comply with the terms of an ARAP and by failing to comply with terms and conditions of the TNCGP as described herein, the Respondents have violated T.C.A. §§69-3-108(a) and (b) and 69-3-114(b), which state:

T.C.A. §69-3-108:

- (a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a

permit with the commissioner or, when necessary, for modification of such person's existing permit.

- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
 - (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
 - (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. § 69-3-114 (b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XXIII.

By discharging sediment into waters of the state that resulted in a condition of pollution, the Respondent has violated T.C.A. §§69-3-114(a), referenced below, and 69-3-114(b), §69-3-108(b) as referenced above.

T.C.A. §69-3-114(a):

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XXIV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondents:

1. The Respondents shall implement appropriate EPSC measures to ensure that no eroded material leaves the site and enters waters of the state. Documentation that EPSC measures have been implemented is to be sent within FIFTEEN (15) DAYS of receipt of this Order and Assessment to the manager of the Division of Water Pollution Control located at the K-EFO at 3711 Middlebrook Pike, Knoxville, Tennessee, 37921.
2. The Respondents shall, within six months of receipt of this Order and Assessment, attend a Fundamentals of Erosion and Sediment Control Workshop provided by the Tennessee Department of Environment and Conservation, and submit

documentation of successful completion to the K-EFO and a copy to the manager of the Enforcement and Compliance Section of Water Pollution Control at, 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243-1534. Information may be found on the program website at <http://www.tnepsc.org>.

3. The Respondents shall, within THIRTY (30) DAYS of receipt of this Order and Assessment, submit for division approval a Corrective Action Plan (CAP), for the impacted portions of the unnamed tributary of Plumb Creek. The plan shall include the specific methods proposed to remove the sediment from the unnamed tributary of Plumb Creek, including dimensions and locations of sediment deposits. The plan shall be submitted to the manager of the division's K-EFO.
4. The Respondents shall, within THIRTY (30) DAYS of division approval, complete the activities outlined in the approved corrective action plan and notify the manager of the division's K-EFO upon completion.
5. The Respondents shall maintain EPSC measures until final site stabilization.
6. The Respondents are hereby assessed a CIVIL PENALTY in the amount of TWENTY THOUSAND FIVE HUNDRED DOLLARS (\$20,500.00).
 - a. The Respondents shall pay SIX THOUSAND DOLLARS (\$6,000.00) to the division within THIRTY (30) DAYS of receipt of this Order.
 - b. The Respondents shall pay THREE THOUSAND DOLLARS (\$3,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondents fail to comply with Item 1 above in a timely manner.

- c. The Respondents shall pay THREE THOUSAND DOLLARS (\$3,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondents fail to comply with Item 2 above in a timely manner.
 - d. The Respondents shall pay THREE THOUSAND DOLLARS (\$3,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondents fail to comply with Item 3 above in a timely manner.
 - e. The Respondents shall pay THREE THOUSAND DOLLARS (\$3,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondents fail to comply with Item 3 above in a timely manner.
 - f. The Respondents shall pay TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondents fail to comply with Item 3 above in a timely manner.
5. The Respondents are hereby assessed DAMAGES in the amount of SIX HUNDRED SEVENTEEN DOLLARS AND TWELVE CENTS (\$617.12) payable within THIRTY (30) DAYS of receipt of this Order and Assessment.
6. The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

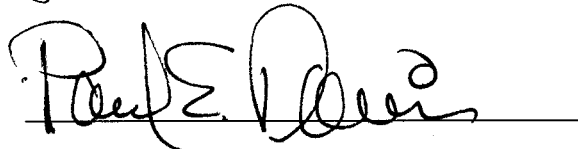
The director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondents shall submit a written request to be received a minimum of THIRY (30) DAYS in advance of the compliance date. The request must include sufficient detail to

justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondents are advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

The director will reply to the Respondent's request in writing. Should the Respondent fail to meet the requirement by the extended date, any associated CIVIL PENALTY shall become due THIRTY (30) DAYS thereafter.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 14th day of January, 2008.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel (OGC) a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible

for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.